

## REMARKS

Claims 1-44 are pending in the case, claim 44 having been added by amendment above.

The Office Action:

- allowed claims 1-9 and 18-23;
- objected to claims 11-13 and 29 as allowable but for their dependence from rejected base claims; and
- rejected claims 10, 14-17, 24-28, and 30-43 as anticipated under 35 U.S.C. § 102 (b) by U.S. Letters Patent 6,323,941 (“*Evans et al.*”).

Applicants traverse each of the rejections on the grounds that *Evans et al.* has been misconstrued. Under a proper construction of *Evans et al.*, claims 10, 14-17, 24-28, and 30-43 are allowable, which cures the objections to claims 11-13 and 29.

More particularly, the Office Action identifies the “semiconductor imager” 28a as the “distributing means” of claim 10. The semiconductor imager 28a is not a distributing means, but is instead a detector. (*Evans et al.*, col. 3, line 54 to col. 4, line 3) The semiconductor imager 28a of *Evans et al.* corresponds to the “detecting means” of claim 10. (*Compare Evans et al.*, col. 3, line 54 to col. 4, line 3 and Figure 4 with Applicants’ specification, p. 10, lines 10-21; p. 11, lines 13-21; Figure 4; Figure 8A)

Applicants respectfully submit that not only is the semiconductor imager 28a of *Evans et al.* not a “distributing means,” but *Evans et al.* does not disclose a “distributing means such as is recited in claim 10. Claims 14-17 incorporate this limitation by virtue of their dependence from claim 10. Accordingly, *Evans et al.* does not anticipate claims 10, and 14-17. M.P.E.P. § 2131; *In re Bond*, 15 U.S.P.Q.2d (BNA) 1566, 1567 (Fed. Cir. 1990) (anticipating reference must

disclose every limitation of the rejected claim in the same relationship to one another as set forth in the claim).

Both claims 24 and 31 recite that the active detection of LADAR radiation occur in parallel with the passive detection of the scene radiation. Claims 25-28, 30, and 32-43 incorporate this limitation by their dependence from claims 24 and 31. The Office cites col. 3, lines 26-32 as teaching this limitation. Applicant respectfully submits that the rejections rest on a misconstruction of Evans *et al.* The cited passage reads:

Both the passive IR image data set and the near simultaneously collected active LADAR image data set are transmitted via the line 34 to the processor 30. Within the processor 30, data from both the passive image data set and the active image data set are combined to produce a multi-dimension image data set. Because the passive and active image data sets are collected by the same sensor assembly 28 at approximately the same time (temporally aligned), the pixels within the two image data sets are also spatially aligned, that is, objects in the scene 50 are in the same positions x and y for both the passive IR image and the active LADAR image.

Although this passage states that the images are collected “near simultaneously” and “at approximately the same time” by the “same sensor,” it does not state that they are detected in parallel.

Furthermore, Applicants file herewith a “Declaration by Bruno J. Evans Under 37 C.F.R. § 1.132” (the “Evans declaration”), which Applicants hereby incorporate by reference for all purposes as if set forth *verbatim* herein. Evans is a common named inventor in both Evans *et al.* and the above-captioned application. This declaration establishes that the apparatus of Evans *et al.* cannot detect two wavelengths of radiation actively and passively in parallel. Evans Declaration, ¶ 4. Thus, not only does Evans *et al.* fail to teach detecting two wavelengths of radiation actively and passively in parallel, the evidence of record establishes that the apparatus

disclosed therein in fact cannot do so. Applicants therefore respectfully submit that claims 24-28 and 31-43 are allowable over the art of record.

Claims 36 and 40, and therefore claims 37-39 and 41-43, recite “separating” the radiation and “detecting” the separated radiation and means therefore, respectively. The Office indicated that claim 1 is allowable because “Evans does not teach the separation and distribution of combined radiation....” Detailed Action, p. 4, ¶ 5. Applicants respectfully submit that this admission establishes that claims 36-43 are also allowable.

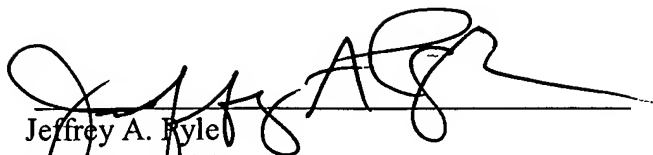
Applicants note that claim 44 is new, having been added by amendment. No new matter is added, as similar limitations are found in claim 40, which was originally filed. Claim 44 depends from claim 31. Claim 31 is allowable, as is established above. Thus, claim 44 is also allowable.

Applicants note that the drawings have been accepted.

Applicants also note that the amendments to claims 1, 10-11, and 18 are not for purposes of patentability and do not narrow the scope of the claims. The amendments merely clarify and make more definite the scope of those claims.

The Examiner is invited to contact the undersigned attorney at (713) 934-4053 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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